

KEVIN V. RYAN (CSBN 118321)  
 United States Attorney  
 JOANN M. SWANSON (CSBN 88143)  
 Chief, Civil Division  
 JONATHAN U. LEE (CSBN 148792)  
 Assistant United States Attorney  
  
 450 Golden Gate Avenue, P.O. Box 36055  
 San Francisco, California 94102-3495  
 Telephone: (415) 436-6909  
 Facsimile: (415) 436-6748  
 Email: jonathan.lee@usdoj.gov

Attorneys for Federal Defendant

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

JUAN M. BUSTOS,	)	Case No. C04-1173 CRB
	)	
Plaintiff,	)	<b>E-FILING CASE</b>
	)	
v.	)	<b>STIPULATION AND AGREEMENT OF</b>
	)	<b>COMPROMISE AND SETTLEMENT</b>
MICHAEL CHERTOFF, Secretary of the	)	<b>AND <del>[PROPOSED]</del> ORDER</b>
United States Department of Homeland	)	
Security,	)	
	)	
Defendant.	)	
	)	

BY AND THROUGH THEIR ATTORNEYS OF RECORD, THE PARTIES AGREE TO  
 THE FOLLOWING STIPULATION AND AGREEMENT OF COMPROMISE AND  
 SETTLEMENT AND ~~[PROPOSED]~~ ORDER:

WHEREAS, Plaintiff Juan Bustos filed this action against Tom Ridge, U.S. Secretary of  
 Agriculture (later succeeded by Michael Chertoff), on March 24, 2004;

WHEREAS, Plaintiff Bustos alleges that defendant discriminated and/or retaliated  
 against him on the basis of his age, race, and national origin, including the following non-  
 selections for promotion:

- (1) 01-SFR-038 for Supervisory Criminal Investigator (two positions), EEO  
 #I-02-H022;
- (2) 02-SFR-177 for Supervisory Criminal Investigator, EEO #I-02-H056;

- (3) 02-SFR-520 Assistant Port Director, EEO #I-03-W041;
- (4) 02-SFR-519 for Supervisory Deportation Officer, EEO #I-03-W048;
- (5) 03-SFR-339 for Supervisory Detention and Deportation Officer, EEO #I-03-W130;
- (6) 03-SFR-007 for Supervisory Deportation Officer, EEO #ICE-04-W026;  
and
- (7) 04-0239-D2 for Supervisory Special Agent (3 positions), EEO #ICE-05-W147;

WHEREAS, plaintiff also alleges that defendant discriminated and/or retaliated against him on the basis of his age, race, and national origin in connection with the following non-selections for promotions (which were previously resolved by the parties in a settlement agreement, but cited in this litigation by plaintiff as historical or background evidence of discrimination and/or retaliation):

- (1) 98-SFR-223 for Assistant Port Director;
- (2) 98-SFR-283 for Assistant Port Director;
- (3) 98-SFR-282 for Supervisory Criminal Investigator;
- (4) 98-SFR-379 for Supervisory Criminal Investigator;
- (5) 98-SFR-476 for Assistant Port Director;
- (6) 00-SFR-212 for Assistant Port Director; and
- (7) 00-SFR-349 for Deputy Port Director;

WHEREAS, defendant contends that defendant did not discriminate and/or retaliate against plaintiff and that all of defendant's decisions, conduct, acts or omissions challenged by plaintiff in this litigation were based on legitimate, non-discriminatory, non-retaliatory, and non-pretextual reasons.

WHEREAS, the parties have discussed resolving once and for all the disputed issues framed by this litigation and, without admitting any allegations or contentions of the other party, negotiated terms of settlement in order to bring this litigation to a conclusion;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between

1 plaintiff Juan Bustos, his attorneys, Steven F. Gruel, Sandra L. Teters, and Jeannie M. Gregori of  
 2 the Law Office of Steven F. Gruel, and defendant Secretary, U.S. Department of Homeland  
 3 Security Michael Chertoff (hereinafter the "Federal Defendant"), by and through their  
 4 undersigned counsel, as follows:

5 1. The parties do hereby agree to settle, compromise and dismiss the above-  
 6 captioned action ("This Action") under the terms and conditions set forth herein.

7 2. The Federal Defendant agrees to pay the sum of Ten Thousand Dollars and No  
 8 Cents (\$10,000.00) to plaintiff, made payable to the trust account of Steven F. Gruel, Esq., under  
 9 the terms and conditions set forth herein.

10 3. The plaintiff and his heirs, executors, administrators, assigns and attorneys hereby  
 11 agree to accept the sum of Ten Thousand Dollars and No Cents (\$10,000.00) , in full and final  
 12 settlement and satisfaction of the claims raised in this Action under the terms and conditions set  
 13 forth herein.

14 4. It is also agreed, by and among the parties, that the settlement amount of Ten  
 15 Thousand Dollars and No Cents (\$10,000.00) represents the entire amount payable to plaintiff  
 16 and her heirs, executors, administrators, assigns, agents, representatives, consultants and  
 17 attorneys.

18 5. It is also agreed, by and among the parties, that the settlement amount of Ten  
 19 Thousand Dollars and No Cents (\$10,000.00) shall be made payable to the trust account of  
 20 Steven F. Gruel, Esq., who is plaintiff's lead counsel of record in this action. The check will be  
 21 mailed to the plaintiff's attorney at the following address: Steven F. Gruel, Esq., 655  
 22 Montgomery Street, Suite 1700, San Francisco, CA 94122.

23 6. It is also agreed by and among the parties that neither plaintiff nor any of his  
 24 attorneys may make any claim for attorney's fees or other costs or expenses of litigation against  
 25 the Federal Defendant, the United States, their agents, servants, or employees in connection with  
 26 plaintiff's claims as set forth herein.

27 7. It is also agreed by and among the parties that defendant will change plaintiff's  
 28

1 GS status from his current level of level 13, step 4 to level 13, step 8, to be made effective within  
 2 60 days of the Court's order approving the terms listed in this Stipulation and Agreement. It is  
 3 understood and agreed that this personnel action will require coordination between the defendant  
 4 and another federal agency, the NFC, to complete the action, and therefore defendant will in  
 5 good faith and diligence attempt to meet the 60 day deadline.

6  
 7 8. Furthermore, defendant agrees that it shall add 42.9 hours of paid annual leave to  
 8 plaintiff's leave account, within 60 days of the Court's order approving the terms listed in this  
 9 Stipulation and Agreement. It is understood and agreed that this personnel action will require  
 10 coordination between the defendant and another federal agency, the NFC, to complete the action,  
 11 and therefore defendant will in good faith and diligence attempt to meet the 60 day deadline.

12 9. It is also agreed by and among the parties that plaintiff will be permitted to attend  
 13 one optional, mutually agreeable, one week training course, at a mutually convenient scheduled  
 14 time, within eighteen months of the date of the parties' signatures on this agreement. It is further  
 15 agreed that nothing in this agreement will effect Mr. Bustos' ability to apply for tuition assistance  
 16 for this or any other training program.

17  
 18 10. It is also agreed by and among the parties that for a four year period after the date  
 19 of the parties' signatures on this agreement (1) plaintiff Juan Bustos will not apply for  
 20 promotions, transfers, details, or vacancies, even if a co-worker or colleague suggests he could or  
 21 should so apply and (2) defendant will not transfer plaintiff Juan Bustos to another position  
 22 located more than 50 miles from his home residence address. Plaintiff understands and agrees  
 23 that he may be subject to a "detail(s)" (temporary duty assignments) during the four year period.  
 24 Plaintiff further acknowledges and agrees that "a detail" or "details" (temporary duty  
 25 assignments) are not a transfer within the meaning of this stipulation. In negotiations leading to  
 26 this agreement, Mr. Bustos requested a 30 day limitation on the length of any detail assignment  
 27 given to him during the four year period, and the parties have expressly agreed that no such  
 28

1 limitation has been incorporated into this agreement. This provision precludes plaintiff Juan  
2 Bustos from applying for positions within the Department of Homeland Security and all of its  
3 divisions and subparts; however, this provision does not preclude Mr. Bustos from applying for  
4 positions in other components of the United States federal government.

5       11. In consideration of the payment of Ten Thousand Dollars and No Cents  
6 (\$10,000.00) and the other terms in paragraphs 2 through 10 of this Stipulation and Agreement,  
7 as set forth above, the plaintiff agrees that he will immediately upon execution of this agreement,  
8 execute a Stipulation of Dismissal, which stipulation shall dismiss, with prejudice, all claims  
9 asserted in This Action or any claims that could have been asserted in this Action, which is  
10 captioned *Juan Bustos v. Secretary of Homeland Security Chertoff*, C 04-1173 CRB. The fully  
11 executed Stipulation of Dismissal will be held by counsel for the defendant and will be filed with  
12 the Court upon receipt by plaintiff's counsel of the settlement amount and the completion of the  
13 settlement terms described in paragraphs 7 and 8 above.

14  
15       12. The parties further agree that the filing of this executed Stipulation and  
16 Agreement shall notify the Court of the parties' agreement to vacate all pending discovery,  
17 motion hearing dates, pretrial deadlines and the September 5, 2006 trial date associated with this  
18 litigation.

19  
20       13. In consideration of the payment of Ten Thousand Dollars and No Cents  
21 (\$10,000.00) and the other terms set forth in this Stipulation and Agreement, as set forth above,  
22 the plaintiff hereby releases and forever discharges the Federal Defendant and any and all of its  
23 past and present officials, employees, agents, attorneys, successors, and assigns from any and all  
24 obligations, damages, liabilities, causes of actions, claims, and demands of any kind and nature  
25 whatsoever, whether suspected or unsuspected, arising in law or equity, arising from or by reason  
26 of any and all known, unknown, foreseen, or unforeseen injuries, and the consequences thereof,  
27 resulting from the facts, circumstances and subject matter that gave rise to this Action, including  
28

1 all claims of discrimination, harassment and retaliation asserted by plaintiff in each and every  
2 Equal Employment Opportunity ("EEO") complaints filed while plaintiff worked for the Federal  
3 Defendant or any and all claims that could have been asserted in the EEO Complaints.

4 14. In consideration of the payment of Ten Thousand Dollars and No Cents  
5 (\$10,000.00), and the other terms in paragraphs 2 through 10 of this Stipulation and Agreement  
6 as set forth above, the plaintiff further agrees that he may not and will not use or rely on the  
7 incidents and actions underlying the EEO Complaints in any other administrative proceeding,  
8 state court action or federal court action to prove any kind of discrimination, harassment or  
9 retaliation or as background or history to any claim of discrimination, harassment or retaliation  
10 he may bring.

12 15. The provisions of California Civil Code Section 1542 are set forth below:

13 A general release does not extend to claims which the creditor does not know or  
14 suspect to exist in his favor at the time of executing the release, which if known  
15 by him must have materially affected his settlement with the debtor.

16 The plaintiff having been apprised of the statutory language of Civil Code Section 1542 by his  
17 attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and  
18 all rights he may have pursuant to the provision of that statute and any similar provision of  
19 federal law. The plaintiff understands that if the facts concerning the plaintiff's claimed injury  
20 and the liability of the Federal Defendant, or his agents, servants, or employees, for damages  
21 pertaining thereto are found hereafter to be other than or different from the facts now believed by  
22 him to be true, this agreement shall be and remain effective notwithstanding such material  
23 difference.  
24

25 16. The parties acknowledge that neither this Stipulation and Agreement nor anything  
26 contained herein shall constitute an admission of liability or fault on the part of the Federal  
27 Defendant, or his agents, servants, or employees. This agreement is entered into by the parties  
28

1 for the purpose of compromising disputed claims and avoiding the expenses and risks of  
2 litigation.

3  
4 17. This Stipulation and Agreement may be pled as a full and complete defense to any  
5 action or other proceeding, including any local, state or federal administrative action, involving  
6 any person or party which arises out of the claims released and discharged by this agreement.

7  
8 18. If any withholding or income tax liability is imposed upon plaintiff based on  
9 payment of the settlement sum as set forth herein, plaintiff shall be solely responsible for paying  
10 any such liability.

11  
12 19. Plaintiff and his attorneys have been informed that payment of the settlement  
13 amount may take 60 days or more to process. Defendant will submit a request for payment to the  
14 National Finance Center within 7 days after Plaintiff's execution of this Stipulation and  
15 Agreement.

16  
17 20. The parties agree that the District Court shall retain jurisdiction over this matter  
18 for the purposes of resolving any dispute alleging a breach of this Stipulation and Agreement.

19  
20 21. Each party acknowledges that they have been represented by and have relied upon  
21 independent counsel in negotiating, preparing and entering into this Stipulation and Agreement  
22 and that they have had the contents of this Stipulation and Agreement fully explained by counsel  
23 and that they are fully aware of and understand all of the terms of the agreement and the legal  
24 consequences thereof. It is further acknowledged that the parties have mutually participated in  
25 the drafting of this Stipulation and Agreement and it is agreed that no provision herein shall be  
26 construed against any party hereto by virtue of the drafting of this Stipulation and Agreement.

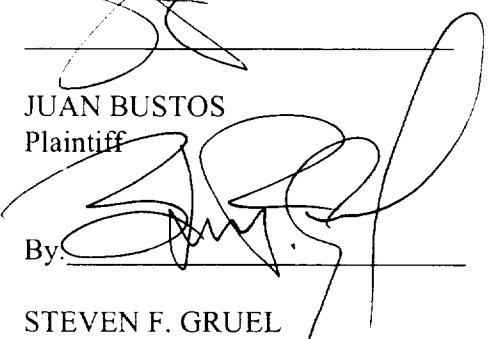
27  
28 22. If any provision of this Stipulation and Agreement shall be held invalid, illegal, or  
unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in

any way be affected or impaired thereby. This instrument shall constitute the entire agreement between the parties, and it is expressly understood and agreed that this agreement has been freely and voluntarily entered into by the parties hereto with the advice of counsel, who have explained the legal effect of this agreement. The parties further acknowledge that no warranties or representations have been made on any subject other than as set forth in this agreement.

Dated: February 17, 2006

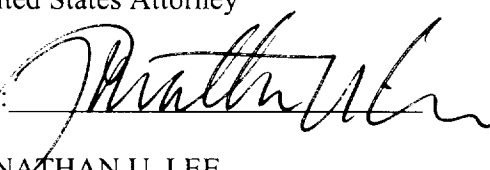
JUAN BUSTOS  
Plaintiff

Dated: February 17<sup>th</sup>, 2006

By:   
STEVEN F. GRUEL  
LAW OFFICES OF STEVEN F. GRUEL  
Attorneys for Plaintiff JUAN BUSTOS

KEVIN V. RYAN  
United States Attorney

Dated: February 17, 2006

By:   
JONATHAN U. LEE  
Assistant United States Attorney  
Attorneys for the Federal Defendant

**PURSUANT TO THE ABOVE STIPULATION AND AGREEMENT,  
APPROVED AND SO ORDERED:**

Dated: February 21, 2006

The Honorable CHARLES R. BREYER  
United States District Judge

